Supreme Court, U.S.
FILED

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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SONJA INDRELAND McLAUGHLIN,
Petitioner,
v.
WASHINGTON STATE BAR ASSOCIATION, ET AL.,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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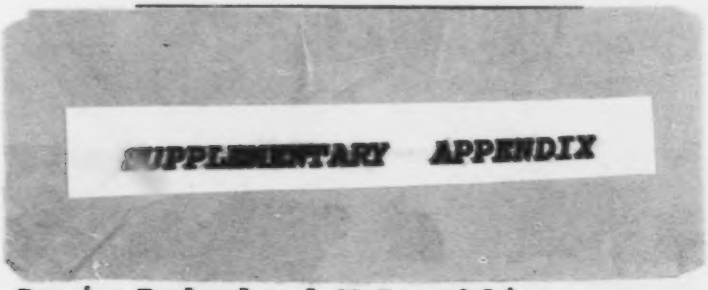

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6 pp

SUPPLEMENTARY APPENDIX

This supplementary appendix was prepared at the request of the Clerk of the Supreme Court to set down for the information of the Court the decision of the District Court of the Eastern District of Washington. This decision was reviewed *de novo* by the Ninth Circuit Court of Appeals, which entered the MEMORANDUM being appealed.

The District Court decision is rank with factual error, indicating that the COMPLAINT was never read by the Judge, nor was the defendants' Fed.R.Civ.P. 12(b)(1) motion, ***which did not ask for summary judgment***. Summary judgment was never briefed or litigated in the district court. In addition, the plaintiff clearly set forth in the COMPLAINT and in oral argument that she had no right to have the actions of the Board of Governors reviewed by the Supreme Court of Washington and that no review was made by that Supreme Court. That being the case, no appeal to the Supreme Court of the United States was possible.

The very document used as a basis for the District Court decision, the so-called "Order" of the Supreme Court of Washington denying McLaughlin's petition for discretionary review, showed on its face that no file exists in the Supreme Court of Washington to which a writ of certiorari could be directed. Thus, the comment of the District Court that it could not determine whether or not petition to the Supreme Court of the United States was available to McLaughlin is facile, unwarranted avoidance of the truth, which truth had been amply pointed out in the hearing.

However, being *de novo* reviewed in the Ninth Circuit, the decision of the district court carries little significance. It is informative, however, as as a demonstration of the irrational adherence to the "*MacKay* Rule" in the Ninth Circuit.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sonja Indreland McLaughlin, A married woman suing as a separate individual, not as a member of a marital community, for the vindication of her own personal civil rights as a citizen, under the Constitution of the United States of America, Plaintiff,	NO. CS94 0363 WFN
-vs- THE WASHINGTON STATE BAR ASSOCIATION, A Private Membership Corporation created by R.C.W. 2.48; et al., Defendants.	ORDER

FILED IN U.S. DISTRICT COURT, EASTERN DISTRICT of WASHINGTON March 16, 1995

A motion hearing was held on March 9, 1995, concerning defendants' Motion to Dismiss pursuant to Fed. R. Civ.P. 12(b). This court, having taken the matter under advisement, finds that it is without jurisdiction to hear plaintiffs claims.

BACKGROUND

This action arises out of a lawyer discipline proceeding brought by the Washington State Bar Association [WSBA] against plaintiff. After a formal com-

plaint was filed by the WSBA, a hearing was held in January, 1992. The hearing officer concluded that plaintiff had made statements that violated ethical rules contained in the Rules of Professional Conduct, the Rules of Lawyer Discipline and the Code of Judicial Conduct. Following review by the Disciplinary Board of the WSBA, plaintiff received a letter of censure and reprimand.

Plaintiff sought discretionary review of that decision by the Washington State Supreme Court on October 6, 1992, the Washington State Supreme Court and on October 6, 1992, the Washington State Supreme Court denied plaintiff's motion for discretionary review.

Plaintiff has now filed this action in the United States District Court the Eastern District of Washington alleging that the rules of the WSBA are unconstitutional as written and as applied to her.

DISCUSSION

This court must initially determine whether it has jurisdiction to hear plaintiff's complaint. The Ninth Circuit has set forth the following general rule:

> Orders of a state court relating to the admission, discipline and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state courts, and not by means of an original action in a lower federal court.

MacKay v. Nesbett, 412 F.2d 846, 846 (9th Cir.), *cert denied*. Under this rule, it would appear that this court

does not have jurisdiction to hear the plaintiff's action.

However, the Ninth Circuit revisited the *MacKay* rule, creating an exception to the general rule. *Miller v. Washington State Bar Association*, 679 F.2d 1313 (9th Cir. 1982). In *Miller*, a complaint was filed with the Washington State Bar Association alleging that Miller should be disciplined for allowing two pages of his poems to be published in local newspapers. The WSBA advised Miller of the complaint and offered him an opportunity to respond to the charges. Miller did not respond within the period allowed and the Disciplinary Board of the WSBA issued a letter of admonition to him. When Miller received the letter, he wrote to the Secretary of the Board inquiring about the availability of remedies to review and expunge the letter from his record. He was informed that there was no administrative procedure available for appealing admonitions because under the rules, an admonition did not amount to a finding of misconduct. Following receipt of the Chairman's letter, Miller filed an action in a federal district court, seeking to have the letter expunged from his file. The Ninth Circuit found that the district court had jurisdiction to hear Miller's claims ruling that:

> The *MacKay* rule does not operate to bar this suit, as there has been no order of the Washington Supreme Court or of any other state court. The only action taken has been that of the disciplinary committee, and Miller was expressly told that review was unavailable. The dual predi-

> cates for application of the *MacKay* rule are a prior state court order, and the availability of a petition to the United State Supreme Court. Both are lacking here.

Miller, 679 F.2d at 1315-16.

This court finds that, unlike the *Miller* case, the dual predicates of *Miller* are satisfied in this case. First, plaintiff exercised her right of recourse by seeking review of the disciplinary proceedings from the Washington Supreme Court. That court denied her petition for discretionary review in an Order dated October 6, 1992. Ct. Rec. 16, Exhibit A).

Plaintiff never filed a petition for certiorari with the United States Supreme Court. Nevertheless, plaintiff does not argue, and this court is unable to determine, that a petition to the United States Supreme Court was unavailable to plaintiff.

For these reasons, this court finds it lacks jurisdiction over the subject matter in plaintiff's complaint and must dismiss plaintiffs, pursuant to Fed.R. Civ. P. 12 (b)(1). Accordingly,

IT IS ORDERED that defendant's Motion to Dismiss and for Summary Judgment, Ct. Rec. 7, is GRANTED and plaintiff's claims are DISMISSED WITH PREJUDICE.

The Clerk is directed to file this Order, provide copies to counsel and CLOSE THIS FILE.

DATED this 15 day March, 1995.

WM. FREMMING NIELSEN
UNITED STATES DISTRICT JUDGE